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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1026

ALFREDO ESTEBAN AND STEVE CRAIG ROBERDS,
Petitioners,

vs.

CENTRAL MISSOURI STATE COLLEGE, WARREN C. LOVINGER, PRESIDENT AND W. LESTER SIMPSON, PRESIDENT AND JOE HERNDON, LELAND J. CULP, VIRGINIA GOTTLIEB, BYRON CONSTANCE, AND J. N. CUNNINGHAM, MEMBERS OF THE BOARD OF REGENTS OF CENTRAL MISSOURI STATE COLLEGE,
Respondents.

RESPONDENTS' BRIEF AND SUGGESTIONS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF CASE

Respondents will herein attempt to follow the reference procedure established in the petition (at page 2).

With exceptions noted below, respondents accept petitioners' "Statement of Case" (Petition page 5), "The Facts", including sub-paragraph "A" and "B" (Petition pages 5-11).

Respondents do not agree as stated in paragraph one (1), page 5, "Statement of Case", that petitioners were suspended ". . . for having participated in a mass demonstration . . ."

On the contrary, petitioners were each suspended on specific charges, to-wit (A 24-25):

CHARGE AGAINST ESTEBAN

(Dated October 18, 1967—Exhibit "B" to Complaint)

"You are hereby notified that you are charged with contributing to and participating in an unruly and unlawful mass gathering occurring on the 30th day of March, 1967, at and near Central Missouri State College in that you, the said Alfredo Esteban, did resist efforts of one Dr. M. L. Meverden in dispersing said mass gathering, failed and refused to identify yourself to Dr. Meverden as requested and used vile and obscene language towards and threatened a resident assistant of the College at Foster-Knox Hall."

CHARGE AGAINST ROBERDS

(Dated October 18, 1967—Exhibit "A" to Complaint)

"You are hereby notified that you are charged with contributing to and participating in an unruly and unlawful mass gathering occurring on or about the 29th and 30th day of March, 1967 at and near Central Missouri State College in that you, the said Stephen Craig Roberds, on the 5th day of February, 1967, directed correspondence to Mr. E. J. Cantrell of the Missouri Legislature evidencing your intention to participate in such mass gathering, did thereafter advise Dean Hollis Chalquist, Dean of Men, of your intention to participate in such demonstration at which time you were specifically advised that such participation would result in immediate suspension from Central Missouri State Col-

lege and that you did thereafter continue to contribute to and participate in said mass gathering all of which actions were in violation of the terms and provisions of your disciplinary probation."

Further, we do not agree with petitioners' statement at paragraph 1, page 6, of the petition that:

> "There was, however, no evidence that either student engaged in or organized any of these disruptive or destructive activities.'

Lastly, respondents disagree with and reject petitioners' "Summary of Evidence" (Petition p. 11) insofar as it seeks to draw conclusions and vary from the statement of facts.

REASONS FOR DENYING THE WRIT

I. There Is No Direct Conflict Between the Circuits, No Undecided Federal Question and No Error.

Petitioners contend that there is a ". . . clear, disagreement as to whether the 'void for vagueness and overbreadth' doctrine applies to student conduct regulations" (Petition p. 13), in the opinions of the Seventh Circuit in *Soglin* v. *Kauffman*, No. 17427 (Cir. 7, October 24, 1969), affirming the District Court opinion (295 F.Supp. 978) and the opinion of the Eighth Circuit in this case. This contention is apparently based on the unfounded and erroneous assumption that the Eighth Circuit has held that standards of vagueness and overbreadth are not applicable to cases involving college and university regulations.

In this connection we call the Court's attention specifically to the opinion at page 19 (A 37):

> "3. The regulations. These are additionally attacked for vagueness and overbreadth and hence no substantive due process grounds . . ." *The answers to all this, we think, are several. First, the college reg-*

ulations, per se, do not appear to us to constitute the fulcrum of plaintiffs' discomfiture (Emphasis added). The charges against Esteban and Roberds did not even refer to the regulations. Roberds was disciplined because he had participated in the demonstrations in the face of specific warning delivered by personal interview with the dean. This was defiance of proper college authority. Esteban was disciplined because of his refusal to comply with an appropriate request by Doctor Meverden and because of his childish behavior and obscenity toward college officials. This, too, was definance of proper college authority. There was no confusion or unawareness in either case. The exercise of common sense was all that was required. Each plaintiff knew the situation very well, knew what he was doing, and knew the consequences."

And subsequently and specifically the Court states (Opinion pp. 23, 24) (A 41):

"We do not hold that any college regulation, however loosely framed, is necessarily valid. We do not hold that a school has the authority to require a student to discard any constitutional right when he matriculates. We do hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct; that, as to these, flexibility and elbow room are to be preferred over specificity; that procedural due process must be afforded (as Judge Hunter by his first opinion here specifically required) by way of adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures; that school regulations are not to be measured by the standards which prevail for the criminal law and for criminal procedure; and that the courts should interfere only where there is a clear case of constitutional infringement."

It is therefore apparent that at the outset the Court of Appeals has rejected petitioners' argument attacking the regulations complained of for the simple reason that the regulations were not involved.

Further, at this point it is well to note that all of petitioners' assigned reasons for granting a writ of certiorari in this case are in their entirety an attack on various college regulations alleged to be "void for vagueness and overbreadth" and to violate petitioners' rights under the First Amendment when as a matter of fact the regulations so attacked were not the basis of petitioners' suspension from Central Missouri State College as the Court of Appeals has recognized.

Nowhere in its opinion does the Court of Appeals approve the regulations complained of by petitioners. It simply holds, 1) ". . . that a college has the inherent power to promulgate rules and regulations, that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct; that, as to these, flexibility and elbow room are to be preferred over specificity; that procedural due process must be afforded (as Judge Hunter by his first opinion here specifically required) by way of adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures; that school regulations are not to be measured by the standards which prevail for the criminal law and for criminal procedure; and that the courts should interfere only where there is a clear case of constitutional infringement." (Opinion p. 23, A 41).

This holding is not in conflict with the opinion of any other Circuit, does not involve unsettled questions of

Federal Law and is not erroneous, as contended by petitioners. It is, as indicated by the Court of Appeals in accord and agreement with *Barker* v. *Hardway*, 283 F.Supp. 228, aff'd 399 F.2d 638 (4 Cir. 1968), cert. denied, 394 U.S. 905, *Buttny* v. *Smiley*, 281 F.Supp. 280, 285, 286 (D. Colo. 1968), *Dickey* v. *Alabama State Bd. of Educ.*, 273 F.Supp. 613, 618 (M.D. Ala. 1967), *State ex rel. Sherman* v. *Hyman*, 180 Tenn. 99, 171 S.W.2d 822, 827 (1942), cert. denied, 319 U.S. 748, *Zanders* v. *Louisiana State Bd. of Educ.*, 281 F.Supp. 747, 757 (W.D. La. 1968), *Goldberg* v. *Regents*, 57 Cal. Rptr. 463, 472 (Ct.App. 1967) and *Cornette* v. *Aldridge*, 408 S.W.2d 935, 941 (Tex. Civ. App. 1966).

Nor is this case in conflict with the holding of this Court in *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503 (1969) wherein it was held that the wearing of armbands in the circumstances of the case was entirely divorced from actually or potentially distruptive conduct and where there was no evidence that authorities had reason to anticipate interference with and infringement of the rights of others. Such are certainly not the facts of the instant case. Likewise, the same is true of *Jones* v. *State Board of Education*, 407 F.2d 834 (6th Cir. 1969) (now on Cert. No. 731) which did not involve, as here, rioting, violence, destruction of property and wide spread interference with rights of others.

Petitioners seek to have this Court hold that certain college regulations, not the basis of their suspension, are void for vagueness and overbreadth and deprive them of their constitutional rights. In so doing they make a false issue directed toward a general holding by the Court which is unrelated to the actual facts.

We respectfully submit that the Court of Appeals has correctly, reasonably and with total authoritative sup-

port decided the real issues in this case and that certiorari should be denied.

Respectfully submitted,

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